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MAY 14 2009
PATENT & TRADEMARK OFFICE

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PATENT
Customer No. 22,852
Attorney Docket No. 10676.0007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	
	)	
Donald GULLBERG	)	Group Art Unit: 1644
	)	
Patent No.: 7,485,429	)	Examiner: Haddad, Maher M.
	)	
Issued: February 3, 2009	)	
	)	
For: INTEGRIN HETERODIMER AND AN ALPHA SUBUNIT THEREOF	)	Confirmation No.: 3147

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

APPLICATION FOR PATENT TERM ADJUSTMENT – POST GRANT

In accordance with 37 C.F.R. § 1.705(d), Applicant hereby applies for patent term adjustment under 35 U.S.C. § 154(b) of 247 days. This Application is being filed with a Petition Under 37 C.F.R. § 1.183 requesting that the Commissioner waive the 2-month filing period set forth in 37 C.F.R. § 1.705(d) in light of a recent decision, rendered on September 30, 2008, by the U.S. District Court for the District of Columbia in *Wyeth v. Dudas*, No. 07-1492 (JR), 2008 U.S. Dist. LEXIS 76063 (D.D.C. Sept. 30, 2008).

I. Statement of the Facts Involved

A. Correct Patent Term Adjustment

According to information printed on the face of the above-identified issued patent, this patent is entitled to 27 days of patent term adjustment.

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Applicant has calculated a patent term adjustment of 247 days based on the following facts:

The Office granted 394 days of USPTO delay and subtracted 367 days of Applicant Delay, resulting in a patent term adjustment of 27 days. The 394 days of USPTO delay were due under 37 C.F.R. §1.702(a)(1) to the Office's failure to mail the first notification under 35 U.S.C. §132 not later than 14 months after the date on which the application fulfilled the requirements of 35 U.S.C. §371.

The Office did not grant any patent term adjustment under 37 C.F.R. § 1.702(b). In Applicant's calculation, the Office should grant 220 days of patent term adjustment under 37 C.F.R. § 1.702(b) based on the Office's failure to issue a patent within three years of the actual filing date of the application.

Wyeth v. Dudas instructs that the USPTO delay of 220 days under the 3-year pendency rule of 37 C.F.R. § 1.702(b) should be counted in addition to the 394 days of USPTO delay under 37 C.F.R. §1.702(a)(1).

Thus, Applicant believes that the total USPTO delay is 614 days (394 days plus 220 days). Subtracting 367 days of Applicant Delay results in a patent term adjustment of 247 days total. Applicant respectfully requests that the current patent term adjustment be reconsidered.

Relevant Dates

The 371(c) date is April 15, 2002.

A Notice of Appeal was filed on November 21, 2005.

The total time between these dates is 3 years, 7 months and 6 days.

The three year period from the 371(c) date ended on April 15, 2005.

The number of days from April 16, 2005, to November 21, 2005, is 220 days.

B. Terminal Disclaimer

The above-identified application is not subject to a Terminal Disclaimer.

C. Reasonable Efforts

There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing of examination of the above-identified application, as set forth in 37 C.F.R. § 1.704.

II. Fee

If there are any fees due in connection with the filing of this Application, please charge them to Deposit Account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: May 14, 2009

By: _____
Marcus D. Kretzschmar
Reg. No. 63,815
(202) 408-4000

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02 FC:1463 200.00 OP

Sir:

PETITION UNDER 37 C.F.R. § 1.183 FOR WAIVER OF THE REQUIREMENT UNDER 37 C.F.R. § 1.705(d)

Pursuant to 37 C.F.R. § 1.183, Patentee petitions the Commissioner to waive the requirements of 37 C.F.R. § 1.705(d) that any request for reconsideration of the patent term adjustment indicated in an issued patent must be filed within two months of the date the patent issues.

The U.S. Patent and Trademark Office (USPTO) issued the above-referenced Patent No. 7,485,429 ("the '429 patent") with a patent term adjustment (PTA) of 27 days. On September 30, 2008, the U.S. District Court for the District of Columbia ruled in *Wyeth v. Dudas* that the USPTO had made an error in the manner it determined PTA. Specifically, the Court's decision relates to situations in which separate time periods of PTA accrue due to USPTO examination delay and those time periods do not overlap.

The Court ruled that in such situations, the PTA should be determined as the sum of the term adjustments of the respective separate time periods, rather than the greater one of the term adjustments, the latter practice being the USPTO's manner of PTA determination used to date.

Patentee requests waiver of Rule 1.705(d) to permit filing and consideration of the accompanying Application for Patent Term Adjustment - Post Grant, in which patentee requests a change in the PTA based on determination in a manner consistent with the Court's decision in *Wyeth v. Dudas*. Patentee already filed an Application for Patent Term Adjustment - Postgrant on February 24, 2009. However, Patentee now files the instant Application for Patent Term Adjustment - Post Grant, which is consistent with the Court's decision in *Wyeth v. Dudas* and which should supersede the application filed on February 24, 2009.

This Petition is accompanied by the required petition fee of $400.00, as set forth in 37 C.F.R. § 1.17(f). If there are any other fees due in connection with the filing of this Petition, please charge such fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: May 14, 2009

By: M. Kretzschmar

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